

Serial No. 09/628,568  
Reply to Office Action of: August 18, 2003  
Amendment dated February 18, 2004

### **REMARKS**

Entry of the Amendment and reconsideration of the claims in view of the following remarks is respectfully requested.

Claims 1 and 25-28 have been amended. Support for the amendments can be found throughout the specification including at page 3, lines 25-30; page 5, lines 18-35; page 6, lines 10-16; page 13, lines 26-35 and page 14, lines 1-9. Applicants submit these claims do not raise any issues of new matter.

Claims 29-31 are new. These claims are supported throughout the specification including at pages 24 to 34, line 2. Applicants submit these claims do not raise any issues of new matter.

### **35 U.S.C. 112, second paragraph**

Claim 28 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner contends that "binding epitope" should be recited after "receptor." Applicants have amended claim 28 so that the rejection no longer applies. Withdrawal of the rejection is requested.

### **35 U.S.C. 112, first paragraph**

Claims 1 and 21-28 stand rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. The Examiner contends that claim 28 contains new matter by reciting "is taken from at least one loop." Without acquiescing to the rejection and solely to expedite prosecution, claim 1 has been amended. Applicants reserve the right to pursue the subject matter of the unamended claim in a continuation application.

Claim 1 as amended recites that the epitope is taken from one loop of the CH<sub>2</sub> domain. The Examiner has acknowledged that the specification supports a salvage receptor binding epitope taken from one loop of the CH<sub>2</sub> domain. Withdrawal of the rejection is therefore respectfully requested.

### **Obviousness-type double patenting**

Former claims 1 and 25-28 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 6-8 of U.S. Pat.

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No. 6,121,022. The Examiner asserts that the claims are not patentably distinct because instant claim 1 and issued claim one are identical except that the former recites "taken from at least one loop" while the latter recites "taken from two loops." The Examiner concludes that "at least one" encompasses "two" such that instant claim 1 embraces subject matter claimed by issued claim 1. Applicants traverse the rejection.

Applicants have amended claim 1 to recite that the epitope is taken from one loop of the CH<sub>2</sub> domain. The Examiner has provided no reasons why a salvage binding epitope taken from one loop would be an obvious variation of a salvage binding receptor taken from two loops. Applicants submit that taking a salvage binding receptor epitope from one loop is not obvious in view of a salvage binding receptor epitope taken from two loops. Moreover, claim 26 as amended now recites that the salvage binding receptor comprises an amino acid sequence methionine isoleucine serine (MIS) with a threonine (T) residue one amino acid C terminal to the MIS and an amino acid sequence histidine, glutamine, asparagine (HQN) with an aspartic acid (D) residue two amino acids C terminal to the HQN sequence and a lysine (K) residue one amino acid C terminal to the D residue. This claim is also not obvious in view of a claim directed to a nucleic acid encoding a modified polypeptide having a salvage binding receptor epitope taken from two loops or any other claim of U.S. Patent No. 6,121,022.

Withdrawal of the rejection is therefore requested.

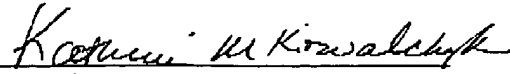
#### SUMMARY

Applicants submit that the claims are in condition for allowance and notification to that effect is earnestly solicited. The Examiner is invited to contact Applicants' representative if prosecution may be assisted thereby.

Respectfully submitted,

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